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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,242	11/09/2001	Michelle Lu	680.0043USU	9256

7590

08/11/2005

Charles N.J. Ruggiero, Esq.
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
10th Floor
One Landmark Square
Stamford, CT 06901-2682

EXAMINER

GHALI, ISIS A D

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/040,242	LU ET AL	
	Examiner	Art Unit	
	Isis Ghali	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 19-29 is/are pending in the application.
- 4a) Of the above claim(s) 11, 12 and 19-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-16 and 25-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

The receipt is acknowledged of applicants' request for extension of time, filed 06/20/2005; and amendment, filed 06/27/2005.

Claims 17 and 18 have been canceled.

This application contains claims 11, 12, 19-24 drawn to nonelected invention. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claims 1-10, 13-16, and 25-29 are included in the prosecution.

Claim Rejections - 35 USC § 102

1. Claims 1, 8-10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2002/0071878 ('878).

US '878 disclosed a topical composition comprising cultured seed cells obtained from cucumber and carrot that used in cosmetic and dermatological compositions (abstract; page 3, 0029-0031, page 4, table 2; page 5, 0038, 0039; page 10, 0137; page 11, 0143, 0144; page 17, claim 10). The compositions is in the form of gel, cream and comprises acceptable vehicle and selected from polyethylene glycol, oils, silicone oil, or

fatty acids (page 10-11, 0137). The composition used to treat skin disorders such as hirsutism, reduction of nail growth, hair treatment, inhibition of scar formation (page 18, claim 22).

Response to Arguments

2. Applicant's arguments filed 06/27/2005 have been fully considered but they are not persuasive.

Applicants traverse the anticipatory rejection by arguing that US '878 discloses in the examples homogenizing of the bulb cells, and not the seed cells, and homogenization is not in all the examples. Homogenization is disclosed in paragraph 0041 is merely disclosed as one of any number of known means for obtaining the extract. Claims 26-25 are not disclosed by the reference.

In response to applicants' arguments above, the examiner position is that the disclosed examples and preferred embodiment do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). The reference disclosed the culture of different parts of the plant including seeds, and also disclosed homogenization of the culture that includes any cultured part including the cells. Applicants' attention is drawn to the fact that claims 26-29 are not included in the anticipatory rejection.

Claim Rejections - 35 USC § 103

3. Claims 2-7, and 14-18, 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US '878 in view of WO 00/64472 ('472).

The teachings of US '878 are discussed above, however the reference does not teach the amount of the plant seed cells in the composition as claimed in claims 2-5, 7, 15 and 16, the specific plants used in the composition as claimed in claims 6, 14, 25-29, and the specific skin conditions treated by the composition.

WO '472 teaches a method and composition for treating dermatological conditions using fruit extract, with the extract from pomegranate is preferred (abstract). The composition used to treat age spots, reduced skin moisture, deepening of skin lines, blemished skin and impetigo (page 11, lines 7-10). The amount of the fruit extract in the composition ranges from 0.1 to 20 % (page 11 lines 15-16). The extract can be from the seed (page 11, line 24). The composition comprises a vehicle as oils and is in the form of gel or cream (page 12, lines 1-15, page 25, lines 26-30).

According to the intended use and the site of application, one having ordinary skill in the art would manipulate the amount of the cultured seed cells in the composition in order to achieve a beneficial effect, and the claimed amounts do not impart patentability to a composition comprising undifferentiated plant seed cells, absent evidence to the contrary. Also selection of specific seeds is within the skill in the art depending on the specific condition.

Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide the composition comprising cultured plant seed cells in a topical composition to treat skin disorders as disclosed by US '878, and to select the amount of the cultured seed to be incorporated in the composition and the specific plant seeds depending on the treated condition as disclosed by WO '472, motivated by the

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teaching of WO '472 that the fruit extracts manage dermatological conditions related to aging, with reasonable expectation of having a topical composition that provides the cultured plant seed cells to the skin nails or hair at the desired amount to a particular location with disorder and in need for the such a treatment with success.

Response to Arguments

4. Applicant's arguments filed 06/27/2005 have been fully considered but they are not persuasive.

Applicants traverse the rejection of claims 1-10, 13-18, and 25-29 as being unpatentable over US '878 in view of WO '472 by arguing that the combination of the references would not provide the whole invention.

In response to applicants' argument, the examiner position is that WO '472 is relied upon for the solely teaching of the suitability of different seed extracts in cosmetics, therefore, since the art recognized using the cultured cells, then these seeds useful as an extract would be used also as cultured. The rationale to modify the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art and the reason to modify the reference may often suggest what the applicant has done. The invention as a whole is disclosed by the references in combination.

The following new ground of rejection is necessitated by applicant's amendment:

Claim Rejections - 35 USC § 103

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 06-298695 ('695).

JP '695 disclosed cultured homogenized undifferentiated seed used in cosmetics. The reference, however, does not teach the broth as a culture media (see the provided translation, abstract; paragraphs 0012-0014).

Applicants failed to show the criticality of using the broth as culture media over any other media.

Therefore, it would have been obvious to have a cosmetic composition comprising cultured homogenized undifferentiated seed cells, and select the culture media that is suitable for intended use of the cultured seeds, with reasonable expectation of having broth as a culture media, since broth is known by its nutritional value.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis Ghali whose telephone number is (571) 272-0595. The examiner can normally be reached on Monday-Thursday, 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Isis Ghali
Examiner
Art Unit 1615
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THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600